

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF MICHIGAN

CURTIS HERTEL, the Register of Deeds and  
Representative of INGHAM COUNTY; and  
NANCY HUTCHINS, the Register of Deeds  
and Representative of BRANCH COUNTY,  
both as Class Representatives of all 83  
counties in the State of Michigan,

Case No. 12-00174  
Hon. Robert Holmes Bell

Plaintiff,

v.

MORTGAGE ELECTRONIC REGISTRATION  
SYSTEMS, INC., MERSCORP, INC., JEANNE  
KIVI, ELLEN COON, MARSHALL ISAACS,  
BANK OF AMERICA N.A., JP MORGAN CHASE &  
CO., CHASE HOME MORTGAGE CORPORATION  
f/k/a CHASE HOME FINANCE, WELLS FARGO  
BANK, N.A., CITIMORTGAGE INC., eTITLE  
AGENCY INC., 1ST CHOICE TITLE SERVICES INC.,  
ATTORNEYS TITLE AGENCY LLC, f/k/a  
WARRANTY TITLE AGENCY LLC, and FEDERAL  
NATIONAL MORTGAGE ASSOCIATION, and JOHN  
DOE as any other authorized signers for MERS or  
MERSCORP, INC., and Defendants JOHN DOE  
Corporations I – MMM,

Defendants.

---

**WELLS FARGO'S RESPONSE CONDITIONALLY OPPOSING  
THE STATE OF MICHIGAN'S MOTION TO INTERVENE**

Defendant, Wells Fargo Bank, N.A., by its counsel, Plunkett Cooney, respectfully  
requests that the State of Michigan's motion to intervene under Fed. R. Civ. P. 24(b) (docket #  
26) be denied if the State's intervention would defeat the Court's jurisdiction under 28 U.S.C.  
1332.

Indeed, the State seeks permissive intervention into this action pursuant to Fed. R. Civ. P.  
24(b)(2). Before permissive intervention is allowed the Court must consider whether

intervention would unduly delay or prejudice the original parties' rights. *City of St. Louis v. Velsicol Chem. Corp.*, 708 F. Supp. 2d 632, 668 (E.D. Mich., 2010); *United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005).

In this case the State of Michigan is not a "citizen" for purposes of diversity jurisdiction. *See, Hughes-Bechtol, Inc. v. West Va. Bd. of Regents*, 737 F.2d 540, 543 (6th Cir. 1984). Because the State is not a "citizen" for diversity purposes its intervention would divest this Court of subject matter jurisdiction under 28 U.S.C. 1332 and, therefore, under 28 U.S.C. 1367(b) permissive intervention should be denied. *See, Baker v. Minnesota Mining & Mfg. Co.*, 99 Fed. App'x 718, 723 (6th Cir. 2004), abrogated on other grounds by *Blackburn v. Oaktree Capital Management, LLC*, 511 F.3d 633 (6th Cir. 2008) (denying state agency's intervention into action removed on diversity grounds because "intervention would divest the district court of jurisdiction").

In the alternative, should the Federal Housing Finance Agency ("FHFA"), which is the Conservator for Fannie Mae and an agency of the Federal government, seek to intervene the FHFA would have the right to intervene (*see*, 12 U.S.C. § 4617(b)(2)(A)(i)), and it would then have the unconditional right to remove this case under 12 U.S.C. § 4511(a) ("There is established the Federal Housing Finance Agency, which shall be an independent agency of the Federal Government."); 28 U.S.C. § 1442(a)(1) (providing that the "United States or any agency thereof" may remove any "civil action . . . commenced in a State court against[it]."). According, should the FHFA seek to intervene the Court could grant that motion to intervene and then also permit the State's intervention while preserving its subject matter jurisdiction to hear and decide the claims and defenses of all parties. In such a case Wells Fargo would not oppose the State's motion to intervene.

### **CONCLUSION AND RELIEF SOUGHT**

For these reasons, the State of Michigan's motion to intervene should be denied unless the FHFA seeks to intervene and it is permitted to do so because in that case the Court could then permit the State to intervene while preserving its subject matter jurisdiction over all of the parties' claims.

/s/ Matthew J. Boettcher  
Matthew J. Boettcher (P40929)  
PLUNKETT COONEY  
Attorneys for Wells Fargo Bank, N.A.  
38505 Woodward Ave., Suite 2000  
Bloomfield Hills, MI 48304  
(248) 901-4035  
[mboettcher@plunkettcooney.com](mailto:mboettcher@plunkettcooney.com)

Dated: November 5, 2012

#### **PROOF OF SERVICE**

The undersigned certifies that a copy of this document was served upon all parties to the above cause to each of the attorneys of record via ECF Filing System November 5, 2012.

Signature: /S/ Matthew J. Boettcher